GOVERNMENT OF INDIA
COMMERCE AND INDUSTRY
LOK SABHA

STARRED QUESTION NO:258
ANSWERED ON:16.12.2008
PATENTS ON ITEMS BASED ON TRADITIONAL KNOWLEDGE
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Will the Minister of COMMERCE AND INDUSTRY be pleased to state:

(a) whether the Government is aware about the patents and trade marks being secured on items/ articles/practices based on traditional knowledge like Yoga, Ayurvedic Recuperations and medicinal plants in the United States and other foreign countries;

(b) if so, the details of such patents granted in each of the last three years and the current year, country-wise;

(c) whether the Government has taken any steps to contest the granting of international patents on items based on traditional Indian knowledge and heritage;

(d) if so, the details of such efforts and the success or failure achieved in the matter so far;

(e) whether the Government is making any efforts to secure traditional Indian knowledge and heritage from international heritage at the World Trade Organisation (WTO) and to amend or bring new domestic legislations;

(f) if so, the details of action being taken at the WTO and any such action for new legislations; and

(g) if not, the reasons therefor?

Answer

THE MINISTER OF COMMERCE AND INDUSTRY (SHRI KAMAL NATH)

(a) to (g): A statement is laid on the Table of the House.

Statement referred to in reply to Lok Sabha Starred Question No. 258 for answer on 16.12.2008 regarding Patents on Items based on Traditional Knowledge.

(a) & (b): Patents are granted under the sovereign prerogative of countries according to their respective patent laws and have territorial effect, that is, they are effective only in the country of grant. In order to qualify for grant of patent in any country, an invention, whether process or product has to meet the criteria of patentability, namely, novelty, inventiveness and industrial applicability. Indian goods/items, which are already in public knowledge/domain, cannot be patented. However, a search of United States Patent and Trade Mark Office (USPTO) database shows that the USPTO has granted 168 patents mainly in Yoga related devices and accessories, such as, yoga mattresses, grip block, yoga socks, devises for stretching etc. Similarly, there are about 3700 trademarks on yoga accessories which have been listed in the data base of registered and pending trade marks by USPTO. Data on items/articles/practices based on traditional knowledge patented worldwide is not maintained.

(c) & (d): As patents are essentially private rights, they are normally challenged, in accordance with the patent laws of the country concerned, by the person(s) whose interests are affected/jeopardized. Whenever an obvious case of infringement of Traditional Knowledge is brought to its notice, Government takes suitable action depending on the circumstances of the case.

In order to protect traditional knowledge from being patented, provisions have been made in the Patents Act, 1970. Section 3 (p) of the said Act provides that an invention, which, in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components is not patentable. Section 3(j) of the said Act further provides that plant in whole or any part thereof other than micro-organisms but including seeds, varieties and species and essentially biological processes for production or propagation of plants are not patentable. As per Section 3 (c) of the said Act, the mere discovery of any living or non-living substance occurring in nature is also not patentable. Sections 25 and 64 of the said Act include anticipation of invention by available local knowledge, including oral knowledge, as one of the grounds for opposition as also for revocation.

The Government has developed a Traditional Knowledge Digital Library (TKDL) database which includes codified knowledge of traditional medicine, including Ayurveda and Unani, in five international languages, namely, English, German, French, Spanish and Japanese to prevent patenting of inventions which are mere traditional knowledge.

(e) to (g): The Government has already taken action for building up the pressure for a mandate review of Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) of the World Trade Organisation (WTO) for bringing amendment in TRIPS Agreement for incorporating a new provision that would make it mandatory for patent applications to disclose the use of any biological resources

or associated traditional knowledge in their invention. The Government is actively pursuing the mater in the TRIPS Council Meetings.

Various Indian Laws such as the Patents Act, 1970, the Geographical Indications of Goods (Registration and Protection) Act, 1999, Protection of Plant Varieties and Farmers' Rights Act, 2001 and the Biological Diversity Act, 2002 have provisions for protecting traditional knowledge. At present there is no proposal for amending the existing laws or for enacting a stand-alone legislation for Traditional Knowledge.